

DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration

49 CFR Part 577

Docket No. NHTSA-2016-0001

RIN 2127-AL66

Update Means of Providing Notification; Improving Efficacy of Recalls

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: The Moving Ahead for Progress in the 21st Century Act (MAP-21) authorizes the Secretary of Transportation to amend, by regulation, the means of notification required under 49 U.S.C. § 30118, to be in a manner other than, or in addition to, first-class mail. Furthermore, Section 24104 of the Fixing America's Surface Transportation Act (FAST Act) expounds on the need to update the means of notification by requiring the Agency to include notification by electronic means in addition to first class mail notification, within 270 days of its enactment. MAP-21 also authorizes the Secretary of Transportation to improve the efficacy of recalls by requiring manufacturers to send additional notifications of defects or noncompliance if a second notification by the manufacturer does not result in an adequate number of motor vehicles or replacement equipment being returned for remedy.

NHTSA seeks public comment on the means, in addition to first class mail, of providing notification to owners, purchasers, and dealers, by a manufacturer of a motor vehicle or replacement equipment, that the vehicle or equipment contains a defect related

to motor vehicle safety or does not comply with an applicable motor vehicle safety standard. As a result of this ANPRM, the Agency anticipates receiving information that will aid the Agency in developing a rule implementing the notification requirements under MAP-21 and the FAST Act. The Agency anticipates that comments and information received will aid in updating 49 C.F.R. Part 577 and, if necessary, 49 C.F.R. Part 573.

DATES: Comments must be received on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments by any of the following methods:

- Internet: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Mail: Docket Management Facility, M-30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590.
- Hand Delivery or Courier: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- Facsimile: (202) 493-2251.

Regardless of how you submit your comments, please mention the docket number of this document.

You may also call the Docket at (202) 366-9322.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading in the Supplementary Information section of this notice. Note that all comments received will

be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading under the Public Participation heading in the Supplementary Information section below for more information.

FOR FURTHER INFORMATION CONTACT: For substantive issues: Jennifer Timian, Office of Defects Investigation, National Highway Traffic Safety Administration, at (202) 366-4000. For legal issues: Justine Casselle, Office of the Chief Counsel, National Highway Traffic Safety Administration, at (202) 366-2992.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

The Moving Ahead for Progress in the 21st Century Act (MAP-21) authorizes the Agency to amend, through rulemaking, the means of providing notification to owners, purchasers, and dealers, by a manufacturer of a motor vehicle or replacement equipment, that the vehicle or equipment contains a defect related to motor vehicle safety or does not comply with an applicable federal motor vehicle safety standard. MAP-21 also authorizes NHTSA to improve recall effectiveness by requiring manufacturers to send additional notifications of defects or noncompliance if a second notification by the manufacturer does not result in an adequate number of motor vehicles or replacement equipment being

returned for remedy. Finally, MAP-21 authorizes NHTSA to permit “public notice” in addition to individualized notification. More recently, Section 24104 of the Fixing America’s Surface Transportation Act (FAST Act) requires the Agency to amend the means of notification to owners by including electronic notification in addition to first class mail notification.

Much has changed in the ways and means by which manufacturers communicate with their customers and influence behavior since the 1970’s when U.S. law first required manufacturers to notify owners in the event of a safety recall. Hard copy mail has become far less prominent in the wake of virtually instantaneous electronic message such as email and text messaging, in addition to heavy use of social media. First class mail does not inform as to whether an owner actually received the mail, let alone whether they read it and understood it, whereas electronic messaging technologies are capable of confirming whether the message at least was delivered to the address given. This ANPRM seeks comments and supporting information on the specific means and methods of notification that manufacturers use, and those that manufacturers consider are most effective, to reach their owners and purchasers as well as motivate them to have safety recalls completed. We seek to learn and obtain opinion on what methods should be required of manufacturers, as well as what methods are viable as alternatives in the event a recall campaign does not meet expectations and/or the Agency believes a public notification as contemplated by the statute is appropriate. This is all in an effort to leverage the new authorities NHTSA has been given to most efficiently and effectively improve safety recall completion rates. NHTSA will use the comments and supporting information submitted in response to this ANPRM to inform its development of a regulatory proposal

that would allow notification of safety related recalls to be issued by means other than, or in addition to, first-class mail.

II. Notification Requirements Before and After MAP-21

A. Means of Notification

49 U.S.C. § 30118(c) requires motor vehicle manufacturers or manufacturers of replacement equipment to “notify...the owners, purchasers, and dealers of vehicle or equipment as provided in section 30119(d) of this section, if the manufacturer:

1. Learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety; or
2. Decides in good faith that the vehicle or equipment does not comply with an applicable motor vehicle safety standard prescribed under this chapter.

The manner by which this required notice would be given to owners or purchasers of vehicles or equipment is governed by 49 U.S.C. § 30119(d). Prior to MAP-21, and for vehicle recalls, section 30119(d) required notice is to be sent via first-class mail to the registered owner, or if the registered owner could not be identified, to the most recent purchaser known to the manufacturer. 49 U.S.C. §§ 30119(d)(1)(A)-(B). For recalls of replacement equipment, the statute required notification to the most recent purchaser. *Id.*

Section 31310 of MAP-21 amended the notice provisions in 49 U.S.C. § 30119(d) to allow the Secretary of Transportation, and by delegation NHTSA’s Administrator, the flexibility to determine the manner by which notifications about safety recalls under 49 U.S.C. § 30118 must be sent. The statute requires notification to be sent to each registered owner whose name and address is reasonably ascertainable through State records or other available sources, or the most recent purchaser known to the

manufacturer. 49 U.S.C. § 30119(d)(1)(A)-(B). Manufacturers are also required to notify dealers under the statute. 49 U.S.C. § 30119(d)(4). The amended statutory language authorizes the Agency to engage in a rulemaking to permit notification of vehicle defects and noncompliance by means other than first-class mail, such as electronic notification. Recently, the FAST Act expounds on this authority by expressly requiring the Agency to amend, by rulemaking, the means of notification to include electronic notification.

B. Additional Notifications

Not only did Section 31310 address the means of providing notification, both on an individualized basis and on a more broad-based level, but it also addressed improving the efficacy of recalls through additional notifications. Previously, 49 U.S.C. § 30119(e) authorized the Secretary to order a second notification if the Secretary determined that the first notification failed to result in an adequate number of motor vehicles or items of replacement equipment being returned for remedy. The statute was silent, however, as to whether additional notifications beyond a second notification could be required. Section 31310 resolves this question by amending 49 U.S.C. § 30119(e), which now, under 49 U.S.C. §30119(e)(2)(A)(i), authorizes the Secretary to order additional notifications if the Secretary determines that a second notification also failed to result in an adequate number of motor vehicles or items of replacement equipment being returned for remedy.

Like the notifications addressed above, the means of additional notifications is to be in a “manner prescribed by the Secretary, by regulation.” 49 U.S.C. §30119(e)(2)(A)(i). This language anticipates the Agency will engage in rulemaking to contemplate and permit, if not order where warranted, notification of motor vehicle and equipment defects and failures to comply by means other than first-class mail.

III. Public Participation

NHTSA invites comments and information on how the agency can best leverage the new flexibilities it has been given under MAP-21 and the FAST Act to update the required means manufacturers use, whether as a first notification or as a follow-up notification, to successfully notify their owners and purchasers and urge them toward seeking the free remedies they are offered. As a general matter, the Agency requests that commenters provide as much research, evidence, or data as possible to support their comments, including cost-benefit information, as that information will be of great assistance to the Agency as it moves forward in the development of a proposed rule. The questions below are intended to focus, but not limit, the information and opinions commenters offer. Commenters are encouraged to offer any suggestions or tactics that may not have been expressly mentioned in this notice.

A. Means and Methods of Notification

(1) How effective has traditional first class mail been at reaching owners? What is the estimated delivery rate for vehicle recalls where registered owner information from state agencies and the U.S. territories are available? What is the estimated delivery rate for equipment recalls where these information sources are not available? How many owners are equipment manufacturers able to notify using traditional first class mail?

(2) Other than by first class mail, in what ways can and do manufacturers notify owners about safety recalls? How do, or should, those means and methods change dependent upon the product being sold or how it was sold (e.g., vehicles as opposed to replacement equipment, or online sales as opposed to brick and mortar retail shops)?

What are the respective rates of delivery success for these methods? What information or technology is available and used to calculate these rates of delivery?

(3) What are the corresponding rates of remedy completion for these methods discussed in your response to paragraph (2) above?

(4) What sales and marketing methods and techniques could be employed for safety recall communications? Which have shown the most success in terms of owners understanding and owner recall completion, which have shown the least, and why? What information or technology is available and used to calculate these findings and how do manufacturers determine if these methods motivated the recall completion as opposed to the recall completion being motivated by other tools such as first class mailings?

(5) If manufacturers communicate with owners through email, text messaging, smart phone applications, or other electronic means, which method of communication do manufacturers find most effective at reaching owners? Which method of communication do owners prefer? Are there best practices as to when and how these communications are applied and when they are not? Are there certain demographics that seem to respond less or more to certain types of electronic communications?

(6) Are manufacturers using social media to inform owners of safety recalls and influence owners' behavior to have recalls work completed? What media is being used and which have been the most or least effective in terms of "click-throughs" or other methods for tracking owner attention? Are there certain demographics that seem to respond less or more to social media generally and/or specific types of social media? Are there best practices as to when and how these communications are applied and when they are not?

(7) Are there any legal or other limitations of which the Agency should be aware in contemplating any of the alternatives noted above or mentioned in your comments?

(8) Do manufacturers currently have access to owners' email addresses?

Excluding collecting emails at point of sale, from where do manufacturers collect this information and how do they determine its "freshness" or accuracy? Should owners be required to provide an email address as part of a purchase or service transaction? Should the answer depend on how and where the product was purchased, the purchase price of the product, or some other factor? Why or why not?

(9) What contingencies do manufacturers have in place to avoid spam filters or to indicate that an email relates to a safety recall explicitly? What assurances are, or could be, put in place to confirm that an email was (a) received and (b) opened?

(10) The purpose of 49 C.F.R. Part 577 is "to ensure that notifications of defects or noncompliances adequately inform and effectively motivate owners of potentially defective or noncomplying motor vehicles or items of replacement equipment to have such vehicles or equipment inspected and, where necessary, remedied as quickly as possible." Does notification by means other than first-class mail and email carry out this purpose? What about text alerts, social media campaigns, and other less traditional methods?

B. General Owner Knowledge and Behavior/Availability of Information to Owners

(1) Do owners read and understand the information they are currently receiving from required safety recall notices delivered via first class mail? What data or research supports your response?

(2) Is there data identifying why owners do not react to safety recall notices they receive from their manufacturers? What does that data suggest would increase owner behavior toward recall completion? Is there data indicating whether an increase in owners recall completion is more likely to occur in the presence of cash incentives, service offers, or other means? Is there data indicating otherwise?

(3) What recall information do owners want and how do they want it expressed? Are there particular words or phrases? Are their particular formats or graphics that align more with recall completion? If any focus group studies have been conducted by manufacturers or other organizations regarding owners' needs in this area, should the Agency use them to aid in assessing how to meet those needs?

(4) Should the Agency engage in its own behavior study including, but not limited to, surveys, polls, and focus groups? If so, what questions should be asked? What strategies used? How large of a survey or poll should be conducted?

C. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

IV. Rulemaking Analyses and Notices

Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under Executive Order 12866 or Executive Order 13563. NHTSA has considered the impact of this ANPRM under the Department

of Transportation’s regulatory policies and procedures. This ANPRM seeks comments and supporting information on how the Agency can best update the means of notifying owners, purchasers, and dealers of recalls in an effort to improve vehicle safety recall completion rates. Because this rulemaking only seeks comments and information to aid in the Agency’s development of a proposed rule, the impact of this ANPRM is limited. Therefore, this rulemaking has been determined to be not “significant” under the Department of Transportation’s regulatory policies and procedures and the policies of the Office of Management and Budget.

Paperwork Reduction Act

As this Notice is an ANPRM, we are not proposing to adopt any new information collection or record keeping requirements. If, after considering the public comments received in response to this notice NHTSA decides to issue a notice of proposed rulemaking that includes information collection or record keeping requirements, that notice will discuss any new paperwork burden associated with those proposed requirements.

Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

V. Submission of Comments

How can I influence NHTSA’s thinking on this rulemaking?

Your comments will help us improve this proposed rulemaking. We invite you to provide different views on options we discuss, new approaches we have not considered, new data, descriptions of how this ANPRM may affect you, or other relevant information. We welcome your views on all aspects of this ANPRM, but request comments on specific issues throughout this document. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide solid evidence and data to support your views.
- If you estimate potential costs, explain how you arrived at that estimate.
- Tell us which parts of the ANPRM you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to the specific sections of the ANPRM.

Your comments must be written in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. 49 C.F.R. § 553.21. We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments to the docket electronically by logging onto <http://www.regulations.gov> or by the means given in the **ADDRESSES** section at the

beginning of this document. Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at

<http://www.whitehouse.gov/omb/fedreg/reproducible.html>.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given in the **FOR FURTHER INFORMATION CONTACT** section. In addition, you should submit a copy from which you have deleted the claimed confidential business information to the docket. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulations. 49 C.F.R. Part 512.

Will the agency consider late comments?

We will consider all comments that the docket receives before the close of business on the comment closing date indicated in the **DATES** section. To the extent possible, we will also consider comments that the docket receives after that date. If the docket receives a comment too late for us to consider it in developing the next step in this rulemaking, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by the docket at the address given in the **ADDRESSES** section. You may also see the comments on the Internet (<http://regulations.gov>). Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the docket for new material. Anyone is able to search the electronic form of all comments name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476 at 19477-78).

Authority: 49 USC 30102, 30103, 30116-30121, 30166; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8.

Issued in Washington, D.C. on _____ under authority delegated pursuant to 49 C.F.R. 1.95.

Frank S. Borris II
Acting Associate Administrator for
Enforcement

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